

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

NORMA ROGERS, ARTHUR ROGERS,)	
and WILLIAM HALE,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 19-3346-CV-S-RK
)	
DOUGLAS GASTON,)	
BOBBY DUNCAN JOHN DOES 1-3,)	
and JANE DOES 1-3,)	
)	
Defendants.)	

**JUDGE GASTON’S MOTION TO DISMISS
PLAINTIFFS’ FIRST AMENDED COMPLAINT**

COMES NOW, Defendant the Honorable Douglas Gaston (hereinafter “Judge Gaston”), by and through undersigned counsel, and for his Motion to Dismiss Plaintiffs’ First Amended Complaint (Doc. 26), pursuant to Fed. R. Civ. Proc. 12(b)(1) and (6), states as follows:

1. On September 30, 2019, Plaintiffs filed their initial Complaint (Doc. 1), in which they claim that Judge Gaston and John and Jane Doe Defendants violated Plaintiffs’ constitutional rights by having them drug tested and detained (Judge Gaston cited Plaintiff Arthur Rogers with criminal contempt of court). Plaintiffs only sue Judge Gaston for a declaratory judgment. (Doc. 26, p. 15).

2. Judge Gaston filed a motion to dismiss and suggestions in support

of his motion on December 13, 2019, under both Fed. R. Civ. P. 12(b)(1) and (6). (Docs. 8 and 13).

3. On April 7, 2020, this Court issued an Order dismissing with prejudice Plaintiffs' claims against Judge Gaston for retrospective declaratory relief, but denied the motion to dismiss as to prospective declaratory relief. (Doc. 16, p. 10). The Court found that Judge Gaston's acts were judicial acts, not taken in the complete absence of jurisdiction, and, therefore, Judge Gaston was protected by absolute judicial immunity from Plaintiffs' claims for retrospective declaratory relief. (*Id.* at 6-9).

4. Then, on June 26, 2020, Plaintiffs requested leave to file their First Amended Complaint. (Doc. 24). That motion was granted (Doc. 25), and Plaintiffs filed their First Amended Complaint on June 29, 2020. (Doc. 26).

5. The First Amended Complaint identified Defendant Bobby Duncan as a bailiff who escorted Plaintiffs out of Judge Gaston's courtroom on June 20, 2017. (Doc. 26, pp. 2 and 6, ¶¶ 7 and 32-34).

6. No new or additional allegations were made against Judge Gaston. Plaintiffs' First Amended Complaint (Doc. 26) alleged the exact same things as Plaintiffs' original Complaint (Doc. 1).

7. Although Plaintiffs' First Amended Complaint (Doc. 26) contains all of the same allegations as the initial Complaint (Doc. 1), pursuant to this Court's prior Order (Doc. 16), all claims except the claim for prospective

declaratory relief were dismissed with prejudice (as against Judge Gaston). *See* Doc. 16, p. 6 (“To any extent Plaintiffs’ declaratory claims against Judge Gaston are retrospective in nature, they are barred by absolute judicial immunity for the reasons set forth below.”). ¹

8. The Court should dismiss Plaintiffs’ remaining claim for prospective declaratory relief, pursuant to Fed. R. Civ. Proc. 12(b)(1) or (6), because it is moot and fails to state a claim upon which relief can be granted.

9. Judge Gaston’s Memorandum of Law in Support of his present Motion to Dismiss is filed contemporaneously herewith as a separate document.

WHEREFORE, Judge Gaston respectfully requests the Court dismiss Plaintiffs’ First Amended Complaint (Doc. 26) with prejudice as to him and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

ERIC S. SCHMITT
Attorney General

/s/ Jack Fleming
Jack Fleming, # 68072
Assistant Attorney General

¹ Judge Gaston did not include his arguments related to judicial immunity in the present Motion to Dismiss because the Court already held that Judge Gaston is protected by absolute judicial immunity. (Doc. 16). To the extent necessary, Judge Gaston incorporates herein his arguments related to judicial immunity that were presented in his original motion to dismiss (Doc. 8) and reply (Doc. 13).

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**ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of July 2020, I electronically filed the foregoing with the Clerk of the Court's ECF system, which sent notice to the following:

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